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109TH CONGRESS
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H. R. 3824

[Report No. 109-237]

To amend and reauthorize the Endangered Species Act of 1973 to provide greater results conserving and recovering listed species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2005

Mr. POMBO (for himself, Mr. CARDOZA, Mr. WALDEN of Oregon, Mr. BERRY, Mr. RADANOVICH, Mr. ROSS, Mrs. CUBIN, Miss McMORRIS, Mr. THOMPSON of Mississippi, Mr. BROWN of South Carolina, Mr. BACA, Mr. GRAVES, Mr. COSTA, and Mr. GIBBONS) introduced the following bill; which was referred to the Committee on Resources

SEPTEMBER 27, 2005

Additional sponsors: Mr. CANNON, Mrs. DRAKE, Mr. BONILLA, Mr. CONAWAY, Mrs. BLACKBURN, Mr. DAVIS of Kentucky, Mr. LEWIS of Kentucky, Mr. JINDAL, Mr. PETERSON of Pennsylvania, Mr. REHBERG, Mr. OTTER, Mr. BISHOP of Georgia, Ms. BORDALLO, Mr. BOREN, Mr. PETERSON of Minnesota, Mr. BRADY of Texas, Mr. CALVERT, Mr. CUNNINGHAM, Mr. DOOLITTLE, Mr. DUNCAN, Mrs. EMERSON, Mr. FLAKE, Mr. FORTUÑO, Mr. HAYWORTH, Mr. HUNTER, Mr. ISSA, Mr. KING of Iowa, Mr. LUCAS, Mr. DANIEL E. LUNGREN of California, Mr. McKEON, Mrs. MUSGRAVE, Mr. NEUGEBAUER, Mr. NUNES, Mr. PEARCE, Mr. RENZI, Mr. SHADEGG, Mr. SULLIVAN, Mr. TANCREDO, Mr. THOMAS, Mr. THORNBERRY, Mr. WELDON of Florida, Mr. YOUNG of Alaska, Mr. ROHRABACHER, Mr. HERGER, Mr. SCOTT of Georgia, Mr. KLINE, Mr. FALEOMAVAEGA, Mr. KENNEDY of Minnesota, Mr. McCAUL of Texas, Mr. MELANCON, Mr. GARY G. MILLER of California, Mr. SIMPSON, Mr. SHUSTER, Mr. KINGSTON, Mr. SOUDER, Mr. NORWOOD, Mr. JENKINS, Mr. SHERWOOD, Mr. FRANKS of Arizona, Mr. BOOZMAN, Mr. COLE of Oklahoma, Mr. BARTON of Texas, Mr. PICKERING, Mr. ORTIZ, Mr. BACHUS, Mr. EDWARDS, Mr. EVERETT, Mr. BONNER, Mr. GINGREY, Mr. ADERHOLT, Mr. DAVIS of Alabama, Mr. RYUN of Kansas, Mr. BAKER, Mr. ROGERS of Alabama, Mr. SMITH of Texas, Mr. McINTYRE, Mr. CRAMER, Mr. HINOJOSA, Mr.

OSBORNE, Ms. GINNY BROWN-WAITE of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, and Ms. JACKSON-LEE of Texas

Deleted sponsor: Mr. OWENS (added September 22, 2005; deleted September 27, 2005)

SEPTEMBER 27, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 19, 2005]

A BILL

To amend and reauthorize the Endangered Species Act of 1973 to provide greater results conserving and recovering listed species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Threatened and Endangered Species Recovery Act of*
6 *2005”.*

7 (b) *TABLE OF CONTENTS.*—*The table of contents for*
8 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Amendment references.

Sec. 3. Definitions.

Sec. 4. Determinations of endangered species and threatened species.

Sec. 5. Repeal of critical habitat requirements.

Sec. 6. Petitions and procedures for determinations and revisions.

Sec. 7. Reviews of listings and determinations.

Sec. 8. Secretarial guidelines; State comments.

Sec. 9. Recovery plans and land acquisitions.

Sec. 10. Cooperation with States and Indian tribes.

Sec. 11. Interagency cooperation and consultation.

Sec. 12. Exceptions to prohibitions.

Sec. 13. Private property conservation.

Sec. 14. Public accessibility and accountability.

Sec. 15. Annual cost analyses.

Sec. 16. Reimbursement for depredation of livestock by reintroduced species.

Sec. 17. Authorization of appropriations.

Sec. 18. Miscellaneous technical corrections.

Sec. 19. Clerical amendment to table of contents.

Sec. 20. Certain actions deemed in compliance.

1 **SEC. 2. AMENDMENT REFERENCES.**

2 *Except as otherwise expressly provided, whenever in*
 3 *this Act an amendment or repeal is expressed in terms of*
 4 *an amendment to, or repeal of, a section or other provision,*
 5 *the reference shall be considered to be made to such section*
 6 *or other provision of the Endangered Species Act of 1973*
 7 *(16 U.S.C. 1531 et seq.).*

8 **SEC. 3. DEFINITIONS.**

9 *(a) BEST AVAILABLE SCIENTIFIC DATA.—Section 3*
 10 *(16 U.S.C. 1532) is amended by redesignating paragraphs*
 11 *(2) through (21) in order as paragraphs (3), (4), (5), (6),*
 12 *(7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18),*
 13 *(19), (20), (21), and (22), respectively, and by inserting be-*
 14 *fore paragraph (3), as so redesignated, the following:*

15 *“(2)(A) The term ‘best available scientific data’ means*
 16 *scientific data, regardless of source, that are available to*
 17 *the Secretary at the time of a decision or action for which*
 18 *such data are required by this Act and that the Secretary*
 19 *determines are the most accurate, reliable, and relevant for*
 20 *use in that decision or action.*

21 *“(B) Not later than one year after the date of the en-*
 22 *actment of the Threatened and Endangered Species Recov-*

1 ery Act of 2005, the Secretary shall issue regulations that
 2 establish criteria that must be met to determine which data
 3 constitute the best available scientific data for purposes of
 4 subparagraph (A).

5 “(C) If the Secretary determines that data for a deci-
 6 sion or action do not comply with the criteria established
 7 by the regulations issued under subparagraph (B), do not
 8 comply with guidance issued under section 515 of the Treas-
 9 ury and General Government Appropriations Act, 2001
 10 (Public Law 106–554; 114 Stat. 2763A–171) by the Direc-
 11 tor of the Office of Management and Budget and the Sec-
 12 retary, do not consist of any empirical data, or are found
 13 in sources that have not been subject to peer review in a
 14 generally acceptable manner—

15 “(i) the Secretary shall undertake the necessary
 16 measures to assure compliance with such criteria or
 17 guidance; and

18 “(ii) the Secretary may—

19 “(I) secure such empirical data;

20 “(II) seek appropriate peer review; and

21 “(III) reconsider the decision or action
 22 based on any supplemental or different data pro-
 23 vided or any peer review conducted pursuant to
 24 this subparagraph.”.

1 (b) *PERMIT OR LICENSE APPLICANT*.—Section 3 (16
 2 *U.S.C. 1532)* is further amended by amending paragraph
 3 (13), as so redesignated, to read as follows:

4 “(13) *The term ‘permit or license applicant’ means,*
 5 *when used with respect to an action of a Federal agency*
 6 *that is subject to section 7(a) or (b), any person that has*
 7 *applied to such agency for a permit or license or for formal*
 8 *legal approval to perform an act.”.*

9 (c) *JEOPARDIZE THE CONTINUED EXISTENCE*.—Sec-
 10 *tion 3 (16 U.S.C. 1532)* is further amended by inserting
 11 after paragraph (11) the following:

12 “(12) *The term ‘jeopardize the continued existence’*
 13 *means, with respect to an agency action (as that term is*
 14 *defined in section 7(a)(2)), that the action reasonably would*
 15 *be expected to significantly impede, directly or indirectly,*
 16 *the conservation in the long-term of the species in the*
 17 *wild.”.*

18 (d) *CONFORMING AMENDMENT*.—Section 7(n) (16
 19 *U.S.C. 1536(n))* is amended by striking “section 3(13)” and
 20 inserting “section 3(14)”.

21 **SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND**
 22 **THREATENED SPECIES.**

23 (a) *REQUIREMENT TO MAKE DETERMINATIONS*.—Sec-
 24 *tion 4 (16 U.S.C. 1533)* is amended by striking so much
 25 as precedes subsection (a)(3) and inserting the following:

1 “*DETERMINATION OF ENDANGERED SPECIES AND*
 2 *THREATENED SPECIES*”

3 “*SEC. 4. (a) IN GENERAL.—(1) The Secretary shall*
 4 *by regulation promulgated in accordance with subsection*
 5 *(b) determine whether any species is an endangered species*
 6 *or a threatened species because of any of the following fac-*
 7 *tors:*

8 “(A) *The present or threatened destruction,*
 9 *modification, or curtailment of its habitat or range*
 10 *by human activities, competition from other species,*
 11 *drought, fire, or other catastrophic natural causes.*

12 “(B) *Overutilization for commercial, rec-*
 13 *reational, scientific, or educational purposes.*

14 “(C) *Disease or predation.*

15 “(D) *The inadequacy of existing regulatory*
 16 *mechanisms, including any efforts identified pursuant*
 17 *to subsection (b)(1).*

18 “(E) *Other natural or manmade factors affecting*
 19 *its continued existence.*

20 “(2) *The Secretary shall use the authority provided by*
 21 *paragraph (1) to determine any distinct population of any*
 22 *species of vertebrate fish or wildlife to be an endangered*
 23 *species or a threatened species only sparingly.”.*

24 (b) *BASIS FOR DETERMINATION.—Section 4(b)(1)(A)*
 25 *(16 U.S.C. 1533(b)(1)(A)) is amended—*

1 (1) by striking “best scientific and commercial
2 data available to him” and inserting “best available
3 scientific data”; and

4 (2) by inserting “Federal agency, any” after
5 “being made by any”.

6 (c) *LISTS*.—Section 4(c)(2) (16 U.S.C. 1533(c)(2)) is
7 amended to read as follows:

8 “(2)(A) *The Secretary shall—*

9 “(i) conduct, at least once every 5 years,
10 based on the information collected for the bien-
11 nial reports to the Congress required by para-
12 graph (3) of subsection (f), a review of all species
13 included in a list that is published pursuant to
14 paragraph (1) and that is in effect at the time
15 of such review; and

16 “(ii) determine on the basis of such review
17 and any other information the Secretary con-
18 siders relevant whether any such species
19 should—

20 “(I) be removed from such list;

21 “(II) be changed in status from an en-
22 dangered species to a threatened species; or

23 “(III) be changed in status from a
24 threatened species to an endangered species.

1 “(B) *Each determination under subparagraph*
 2 *(A)(ii) shall be made in accordance with subsections*
 3 *(a) and (b).’*.”

4 **SEC. 5. REPEAL OF CRITICAL HABITAT REQUIREMENTS.**

5 *(a) REPEAL OF REQUIREMENT.—Section 4(a) (16*
 6 *U.S.C. 1533(a)) is amended by striking paragraph (3).*

7 *(b) CONFORMING AMENDMENTS.—*

8 *(1) Section 3 (16 U.S.C. 1532), as amended by*
 9 *section 3 of this Act, is further amended by striking*
 10 *paragraph (6) and by redesignating paragraphs (7)*
 11 *through (22) in order as paragraphs (6) through (21).*

12 *(2) Section 4(b) (16 U.S.C. 1533(b)), as other-*
 13 *wise amended by this Act, is further amended by*
 14 *striking paragraph (2), and by redesignating para-*
 15 *graphs (3) through (8) in order as paragraphs (2)*
 16 *through (7), respectively.*

17 *(3) Section 4(b) (16 U.S.C. 1533(b)) is further*
 18 *amended in paragraph (2), as redesignated by para-*
 19 *graph (2) of this subsection, by striking subparagraph*
 20 *(D).*

21 *(4) Section 4(b) (16 U.S.C. 1533(b)) is further*
 22 *amended in paragraph (4), as redesignated by para-*
 23 *graph (2) of this subsection, by striking “determina-*
 24 *tion, designation, or revision referred to in subsection*

1 (a)(1) or (3)” and inserting “determination referred
2 to in subsection (a)(1)”.

3 (5) Section 4(b) (16 U.S.C. 1533(b)) is further
4 amended in paragraph (7), as redesignated by para-
5 graph (2) of this subsection, by striking “; and if such
6 regulation” and all that follows through the end of the
7 sentence and inserting a period.

8 (6) Section 4(c)(1) (16 U.S.C. 1533(c)(1)) is
9 amended—

10 (A) in the second sentence—

11 (i) by inserting “and” after “if any”;

12 and

13 (ii) by striking “, and specify any”

14 and all that follows through the end of the

15 sentence and inserting a period; and

16 (B) in the third sentence by striking “, des-
17 ignations,”.

18 (7) Section 5 (16 U.S.C. 1534), as amended by
19 section 9(a)(3) of this Act, is further amended in sub-
20 section (j)(2) by striking “section 4(b)(7)” and insert-
21 ing “section 4(b)(6)”.

22 (8) Section 6(c) (16 U.S.C. 1535(c)), as amended
23 by section 10(1) of this Act, is further amended in
24 paragraph (3) by striking “section 4(b)(3)(B)(iii)”

1 each place it appears and inserting “section
2 4(b)(2)(B)(iii)”.

3 (9) Section 7 (16 U.S.C. 1536) is amended—

4 (A) in subsection (a)(2) in the first sentence
5 by striking “or result in the destruction or ad-
6 verse modification of any habitat of such spe-
7 cies” and all that follows through the end of the
8 sentence and inserting a period;

9 (B) in subsection (a)(4) in the first sentence
10 by striking “or result” and all that follows
11 through the end of the sentence and inserting a
12 period; and

13 (C) in subsection (b)(3)(A) by striking “or
14 its critical habitat”.

15 (10) Section 10(j)(2)(C)) (16 U.S.C.
16 1539(j)(2)(C)), as amended by section 12(c) of this
17 Act, is further amended—

18 (A) by striking “that—” and all that fol-
19 lows through “(i) solely” and inserting “that
20 solely”; and

21 (B) by striking “; and” and all that follows
22 through the end of the sentence and inserting a
23 period.

1 **SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINA-**
 2 **TIONS AND REVISIONS.**

3 (a) *TREATMENT OF PETITIONS.*—Section 4(b) (16
 4 U.S.C. 1533(b)) is amended in paragraph (2), as redesign-
 5 nated by section 5(b)(2) of this Act, by adding at the end
 6 of subparagraph (A) the following: “The Secretary shall not
 7 make a finding that the petition presents substantial sci-
 8 entific or commercial information indicating that the peti-
 9 tioned action may be warranted unless the petitioner pro-
 10 vides to the Secretary a copy of all information cited in
 11 the petition.”.

12 (b) *IMPLEMENTING REGULATIONS.*—

13 (1) *PROPOSED REGULATIONS.*—Section 4(b) (16
 14 U.S.C. 1533(b)) is amended—

15 (A) in paragraph (4)(A), as redesignated by
 16 section 5(b)(2) of this Act—

17 (i) in clause (i) by striking “, and”
 18 and inserting a semicolon;

19 (ii) in clause (ii) by striking “to the
 20 State agency in” and inserting “to the Gov-
 21 ernor of, and the State agency in,”;

22 (iii) in clause (ii) by striking “such
 23 agency” and inserting “such Governor or
 24 agency”;

25 (iv) in clause (ii) by inserting “and”
 26 after the semicolon at the end; and

1 (v) by adding at the end the following:

2 “(iii) maintain, and shall make available, a
3 complete record of all information concerning the de-
4 termination or revision in the possession of the Sec-
5 retary, on a publicly accessible website on the Inter-
6 net, including an index to such information.”; and

7 (B) by adding at the end the following:

8 “(8)(A) Information maintained and made
9 available under paragraph (5)(A)(iii) shall include
10 any status review, all information cited in such a sta-
11 tus review, all information referred to in the proposed
12 regulation and the preamble to the proposed regula-
13 tion, and all information submitted to the Secretary
14 by third parties.

15 “(B) The Secretary shall withhold from public
16 review under paragraph (5)(A)(iii) any information
17 that may be withheld under 552 of title 5, United
18 States Code.”.

19 (2) *FINAL REGULATIONS*.—Paragraph (5) of sec-
20 tion 4(b) (16 U.S.C. 1533(b)), as amended by section
21 5(b)(2) of this Act, is further amended—

22 (A) in subparagraph (A) by striking clauses
23 (i) and (ii) and inserting the following:

1 “(i) a final regulation to implement such a de-
 2 termination of whether a species is an endangered
 3 species or a threatened species;

4 “(ii) notice that such one-year period is being
 5 extended under subparagraph (B)(i); or

6 “(iii) notice that the proposed regulation is being
 7 withdrawn under subparagraph (B)(ii), together with
 8 the finding on which such withdrawal is based.”;

9 (B) in subparagraph (B)(i) by striking
 10 “subparagraph (A)(i)” and inserting “subpara-
 11 graph (A)”;

12 (C) in subparagraph (B)(ii) by striking
 13 “subparagraph (A)(i)” and inserting “subpara-
 14 graph (A)”;

15 (D) by striking subparagraph (C).

16 (3) *EMERGENCY DETERMINATIONS.*—Paragraph
 17 (6) of section 4(b) (16 U.S.C. 1533(b)), as redesign-
 18 ated by section 5(b)(2) of this Act, is further amend-
 19 ed—

20 (A) in the matter preceding subparagraph
 21 (A), by inserting “with respect to a determina-
 22 tion of a species to be an endangered species or
 23 a threatened species” after “any regulation”; and

1 (B) in subparagraph (B), by striking “the
2 State agency in” and inserting “the Governor of,
3 and State agency in,”.

4 **SEC. 7. REVIEWS OF LISTINGS AND DETERMINATIONS.**

5 Section 4(c) (16 U.S.C. 1533(c)) is amended by insert-
6 ing at the end the following:

7 “(3) Each determination under paragraph (2)(B) shall
8 consider one of the following:

9 “(A) Except as provided in subparagraph (B) of
10 this paragraph, the criteria in the recovery plan for
11 the species required by section 5(c)(1)(A) or (B).

12 “(B) If the recovery plan is issued before the cri-
13 teria required under section 5(c)(1)(A) and (B) are
14 established or if no recovery plan exists for the spe-
15 cies, the factors for determination that a species is an
16 endangered species or a threatened species set forth in
17 subsections (a)(1) and (b)(1).

18 “(C) A finding of fundamental error in the de-
19 termination that the species is an endangered species,
20 a threatened species, or extinct.

21 “(D) A determination that the species is no
22 longer an endangered species or threatened species or
23 in danger of extinction, based on an analysis of the
24 factors that are the basis for listing under section
25 4(a)(1).”.

1 **SEC. 8. SECRETARIAL GUIDELINES; STATE COMMENTS.**

2 *Section 4 (16 U.S.C. 1533) is amended—*

3 *(1) by striking subsections (f) and (g) and redesi-*
 4 *gnating subsections (h) and (i) as subsections (f) and*
 5 *(g), respectively;*

6 *(2) in subsection (f), as redesignated by para-*
 7 *graph (1) of this subsection—*

8 *(A) in the heading by striking “AGENCY”*
 9 *and inserting “SECRETARIAL”;*

10 *(B) in the matter preceding paragraph (1),*
 11 *by striking “the purposes of this section are*
 12 *achieved” and inserting “this section is imple-*
 13 *mented”;*

14 *(C) by redesignating paragraph (4) as*
 15 *paragraph (5);*

16 *(D) in paragraph (3) by striking “and”*
 17 *after the semicolon at the end, and by inserting*
 18 *after paragraph (3) the following:*

19 *“(4) the criteria for determining best available*
 20 *scientific data pursuant to section 3(2); and”;* and

21 *(E) in paragraph (5), as redesignated by*
 22 *subparagraph (C) of this paragraph, by striking*
 23 *“subsection (f) of this section” and inserting*
 24 *“section 5”; and*

25 *(3) in subsection (g), as redesignated by para-*
 26 *graph (1) of this section—*

1 (A) by inserting “COMMENTS.—” before the
2 first sentence;

3 (B) by striking “a State agency” the first
4 place it appears and inserting “a Governor,
5 State agency, county (or equivalent jurisdiction),
6 or unit of local government”;

7 (C) by striking “a State agency” the second
8 place it appears and inserting “a Governor,
9 State agency, county (or equivalent jurisdiction),
10 or unit of local government”;

11 (D) by striking “the State agency” and in-
12 serting “the Governor, State agency, county (or
13 equivalent jurisdiction), or unit of local govern-
14 ment, respectively”; and

15 (E) by striking “agency’s”.

16 **SEC. 9. RECOVERY PLANS AND LAND ACQUISITIONS.**

17 (a) *IN GENERAL*.—Section 5 (16 U.S.C. 1534) is
18 amended—

19 (1) by redesignating subsections (a) and (b) as
20 subsection (k) and (l), respectively;

21 (2) in subsection (l), as redesignated by para-
22 graph (1) of this section, by striking “subsection (a)
23 of this section” and inserting “subsection (k)”; and

1 (3) by striking so much as precedes subsection
2 (k), as redesignated by paragraph (1) of this section,
3 and inserting the following:

4 “RECOVERY PLANS AND LAND ACQUISITION

5 “SEC. 5. (a) RECOVERY PLANS.—The Secretary shall,
6 in accordance with this section, develop and implement a
7 plan (in this subsection referred to as a ‘recovery plan’)
8 for the species determined under section 4(a)(1) to be an
9 endangered species or a threatened species, unless the Sec-
10 retary finds that such a plan will not promote the conserva-
11 tion and survival of the species.

12 “(b) DEVELOPMENT OF RECOVERY PLANS.—(1) Sub-
13 ject to paragraphs (2) and (3), the Secretary, in developing
14 recovery plans, shall, to the maximum extent practicable,
15 give priority to those endangered species or threatened spe-
16 cies, without regard to taxonomic classification, that are
17 most likely to benefit from such plans, particularly those
18 species that are, or may be, in conflict with construction
19 or other development projects or other forms of economic
20 activity.

21 “(2) In the case of any species determined to be an
22 endangered species or threatened species after the date of
23 the enactment of the Threatened and Endangered Species
24 Recovery Act of 2005, the Secretary shall publish a final
25 recovery plan for a species within 2 years after the date
26 the species is listed under section 4(c).

1 “(3)(A) *For those species that are listed under section*
2 *4(c) on the date of enactment of the Threatened and Endan-*
3 *gered Species Recovery Act of 2005 and are described in*
4 *subparagraph (B) of this paragraph, the Secretary, after*
5 *providing for public notice and comment, shall—*

6 “(i) *not later than 1 year after such date, pub-*
7 *lish in the Federal Register a priority ranking system*
8 *for preparing or revising such recovery plans that is*
9 *consistent with paragraph (1) and takes into consid-*
10 *eration the scientifically based needs of the species;*
11 *and*

12 “(ii) *not later than 18 months after such date,*
13 *publish in the Federal Register a list of such species*
14 *ranked in accordance with the priority ranking sys-*
15 *tem published under clause (i) for which such recov-*
16 *ery plans will be developed or revised, and a tentative*
17 *schedule for such development or revision.*

18 “(B) *A species is described in this subparagraph if—*

19 “(i) *a recovery plan for the species is not pub-*
20 *lished under this Act before the date of enactment of*
21 *the Threatened and Endangered Species Recovery Act*
22 *of 2005 and the Secretary finds such a plan would*
23 *promote the conservation and survival of the species;*
24 *or*

1 “(ii) a recovery plan for the species is published
2 under this Act before such date of enactment and the
3 Secretary finds revision of such plan is warranted.

4 “(C)(i) The Secretary shall, to the maximum extent
5 practicable, adhere to the list and tentative schedule pub-
6 lished under subparagraph (A)(ii) in developing or revising
7 recovery plans pursuant to this paragraph.

8 “(ii) The Secretary shall provide the reasons for any
9 deviation from the list and tentative schedule published
10 under subparagraph (A)(ii), in each report to the Congress
11 under subsection (e).

12 “(4) The Secretary, using the priority ranking system
13 required under paragraph (3), shall prepare or revise such
14 plans within 10 years after the date of the enactment of
15 the Threatened and Endangered Species Recovery Act of
16 2005.

17 “(c) PLAN CONTENTS.—(1)(A) Except as provided in
18 subparagraph (E), a recovery plan shall be based on the
19 best available scientific data and shall include the following:

20 “(i) Objective, measurable criteria that, when
21 met, would result in a determination, in accordance
22 with this section, that the species to which the recov-
23 ery plan applies be removed from the lists published
24 under section 4(c) or be reclassified from an endan-
25 gered species to a threatened species.

1 “(ii) *A description of such site-specific or other*
2 *measures that would achieve the criteria established*
3 *under clause (i), including such intermediate meas-*
4 *ures as are warranted to effect progress toward*
5 *achievement of the criteria.*

6 “(iii) *Estimates of the time required and the*
7 *costs to carry out those measures described under*
8 *clause (ii), including, to the extent practicable, esti-*
9 *mated costs for any recommendations, by the recovery*
10 *team, or by the Secretary if no recovery team is se-*
11 *lected, that any of the areas identified under clause*
12 *(iv) be acquired on a willing seller basis.*

13 “(iv) *An identification of those specific areas*
14 *that are of special value to the conservation of the*
15 *species.*

16 “(B) *Those members of any recovery team appointed*
17 *pursuant to subsection (d) with relevant scientific expertise,*
18 *or the Secretary if no recovery team is appointed, shall,*
19 *based solely on the best available scientific data, establish*
20 *the objective, measurable criteria required under subpara-*
21 *graph (A)(i).*

22 “(C)(i) *If the recovery team, or the Secretary if no re-*
23 *covery team is appointed, determines in the recovery plan*
24 *that insufficient best available scientific data exist to deter-*
25 *mine criteria or measures under subparagraph (A) that*

1 *could achieve a determination to remove the species from*
2 *the lists published under section 4(c), the recovery plan shall*
3 *contain interim criteria and measures that are likely to im-*
4 *prove the status of the species.*

5 “(ii) *If a recovery plan does not contain the criteria*
6 *and measures provided for by clause (i) of subparagraph*
7 *(A), the recovery team for the plan, or by the Secretary if*
8 *no recovery team is appointed, shall review the plan at in-*
9 *tervals of no greater than 5 years and determine if the plan*
10 *can be revised to contain the criteria and measures required*
11 *under subparagraph (A).*

12 “(iii) *If the recovery team or the Secretary, respec-*
13 *tively, determines under clause (ii) that a recovery plan can*
14 *be revised to add the criteria and measures provided for*
15 *under subparagraph (A), the recovery team or the Sec-*
16 *retary, as applicable, shall revise the recovery plan to add*
17 *such criteria and measures within 2 years after the date*
18 *of the determination.*

19 “(D) *In specifying measures in a recovery plan under*
20 *subparagraph (A), a recovery team or the Secretary, as ap-*
21 *plicable, shall—*

22 “(i) *whenever possible include alternative meas-*
23 *ures; and*

24 “(ii) *in developing such alternative measures, the*
25 *Secretary shall seek to identify, among such alter-*

1 *native measures of comparable expected efficacy, the*
 2 *alternative measures that are least costly.*

3 *“(E) Estimates of time and costs pursuant to subpara-*
 4 *graph (A)(iii), and identification of the least costly alter-*
 5 *natives pursuant to subparagraph (D)(ii), are not required*
 6 *to be based on the best available scientific data.*

7 *“(2) Any area that, immediately before the enactment*
 8 *of the Threatened and Endangered Species Recovery Act of*
 9 *2005, is designated as critical habitat of an endangered spe-*
 10 *cies or threatened species shall be treated as an area de-*
 11 *scribed in subparagraph (A)(iv) until a recovery plan for*
 12 *the species is developed or the existing recovery plan for*
 13 *the species is revised pursuant to subsection (b)(3).*

14 *“(d) RECOVERY TEAMS.—(1) The Secretary shall pro-*
 15 *mulgate regulations that provide for the establishment of*
 16 *recovery teams for development of recovery plans under this*
 17 *section.*

18 *“(2) Such regulations shall—*

19 *“(A) establish criteria and the process for select-*
 20 *ing the members of recovery teams, and the process*
 21 *for preparing recovery plans, that ensure that each*
 22 *team—*

23 *“(i) is of a size and composition to enable*
 24 *timely completion of the recovery plan; and*

1 “(ii) includes sufficient representation from
2 constituencies with a demonstrated direct inter-
3 est in the species and its conservation or in the
4 economic and social impacts of its conservation
5 to ensure that the views of such constituencies
6 will be considered in the development of the plan;

7 “(B) include provisions regarding operating pro-
8 cedures of and recordkeeping by recovery teams;

9 “(C) ensure that recovery plans are scientifically
10 rigorous and that the evaluation of costs required by
11 paragraphs (1)(A)(iii) and (1)(D) of subsection (c)
12 are economically rigorous; and

13 “(D) provide guidelines for circumstances in
14 which the Secretary may determine that appointment
15 of a recovery team is not necessary or advisable to de-
16 velop a recovery plan for a specific species, including
17 procedures to solicit public comment on any such de-
18 termination.

19 “(3) *The Federal Advisory Committee Act* (5 App.
20 U.S.C.) shall not apply to recovery teams appointed in ac-
21 cordance with regulations issued by the Secretary under
22 this subsection.

23 “(e) *REPORTS TO CONGRESS.*—(1) *The Secretary shall*
24 *report every two years to the Committee on Resources of*
25 *the House of Representatives and the Committee on Envi-*

1 *ronment and Public Works of the Senate on the status of*
 2 *all domestic endangered species and threatened species and*
 3 *the status of efforts to develop and implement recovery plans*
 4 *for all domestic endangered species and threatened species.*

5 “(2) *In reporting on the status of such species since*
 6 *the time of its listing, the Secretary shall include—*

7 “(A) *an assessment of any significant change in*
 8 *the well-being of each such species, including—*

9 “(i) *changes in population, range, or*
 10 *threats; and*

11 “(ii) *the basis for that assessment; and*

12 “(B) *for each species, a measurement of the de-*
 13 *gree of confidence in the reported status of such spe-*
 14 *cies, based upon a quantifiable parameter developed*
 15 *for such purposes.*

16 “(f) *PUBLIC NOTICE AND COMMENT.—The Secretary*
 17 *shall, prior to final approval of a new or revised recovery*
 18 *plan, provide public notice and an opportunity for public*
 19 *review and comment on such plan. The Secretary shall con-*
 20 *sider all information presented during the public comment*
 21 *period prior to approval of the plan.*

22 “(g) *STATE COMMENT.—The Secretary shall, prior to*
 23 *final approval of a new or revised recovery plan, provide*
 24 *a draft of such plan and an opportunity to comment on*
 25 *such draft to the Governor of, and State agency in, any*

1 *State to which such draft would apply. The Secretary shall*
 2 *include in the final recovery plan the Secretary's response*
 3 *to the comments of the Governor and the State agency.*

4 “(h) *CONSULTATION TO ENSURE CONSISTENCY WITH*
 5 *DEVELOPMENT PLAN.*—(1) *The Secretary shall, prior to*
 6 *final approval of a new or revised recovery plan, consult*
 7 *with any pertinent State, Indian tribe, or regional or local*
 8 *land use agency or its designee.*

9 “(2) *For purposes of this Act, the term ‘Indian tribe’*
 10 *means—*

11 “(A) *with respect to the 48 contiguous States,*
 12 *any federally recognized Indian tribe, organized band,*
 13 *pueblo, or community; and*

14 “(B) *with respect to Alaska, the Metlakatla In-*
 15 *dian Community.*

16 “(i) *USE OF PLANS.*—(1) *Each Federal agency shall*
 17 *consider any relevant best available scientific data con-*
 18 *tained in a recovery plan in any analysis conducted under*
 19 *section 102 of the National Environmental Policy Act of*
 20 *1969 (42 U.S.C. 4332).*

21 “(2)(A)(i) *The head of any Federal agency may enter*
 22 *into an agreement with the Secretary specifying the meas-*
 23 *ures the agency will carry out to implement a recovery*
 24 *plan.*

1 “(ii) *Each such agreement shall be published in draft*
 2 *form with notice and an opportunity for public comment.*

3 “(iii) *Each such final agreement shall be published,*
 4 *with responses by the head of the Federal agency to any*
 5 *public comments submitted on the draft agreement.*

6 “(B) *Nothing in a recovery plan shall be construed to*
 7 *establish regulatory requirements.*

8 “(j) *MONITORING.—(1) The Secretary shall implement*
 9 *a system in cooperation with the States to monitor effec-*
 10 *tively for not less than five years the status of all species*
 11 *that have recovered to the point at which the measures pro-*
 12 *vided pursuant to this Act are no longer necessary and that,*
 13 *in accordance with this section, have been removed from*
 14 *the lists published under section 4(c).*

15 “(2) *The Secretary shall make prompt use of the au-*
 16 *thority under section 4(b)(7) to prevent a significant risk*
 17 *to the well-being of any such recovered species.”.*

18 (b) *RECOVERY PLANS FOR SPECIES OCCUPYING MORE*
 19 *THAN ONE STATE.—Section 6 (16 U.S.C. 1535) is amended*
 20 *by adding at the end the following:*

21 “(j) *RECOVERY PLANS FOR SPECIES OCCUPYING*
 22 *MORE THAN ONE STATE.—Any recovery plan under sec-*
 23 *tion 5 for an endangered species or a threatened species that*
 24 *occupies more than one State shall identify criteria and ac-*
 25 *tions pursuant to subsection (c)(1) of section 5 for each*

1 *State that are necessary so that the State may pursue a*
 2 *determination that the portion of the species found in that*
 3 *State may be removed from lists published under section*
 4 *4(c).”.*

5 *(c) THREATENED AND ENDANGERED SPECIES INCEN-*
 6 *TIVES PROGRAM.—*

7 *(1) AGREEMENTS AUTHORIZED.—Section 5 (16*
 8 *U.S.C. 1534) is further amended by adding at the end*
 9 *the following:*

10 *“(m) THREATENED AND ENDANGERED SPECIES IN-*
 11 *CENTIVES PROGRAM.—(1) The Secretary may enter into*
 12 *species recovery agreements pursuant to paragraph (2) and*
 13 *species conservation contract agreements pursuant to para-*
 14 *graph (3) with persons, other than agencies or departments*
 15 *of the Federal Government or State governments, under*
 16 *which the Secretary is obligated, subject to the availability*
 17 *of appropriations, to make annual payments or provide*
 18 *other compensation to the persons to implement the agree-*
 19 *ments.*

20 *“(2)(A) The Secretary and persons who own or control*
 21 *the use of private land may enter into species recovery*
 22 *agreements with a term of not less than 5 years that meet*
 23 *the criteria set forth in subparagraph (B) and are in ac-*
 24 *cordance with the priority established in subparagraph (C).*

1 “(B) *A species recovery agreement entered into under*
2 *this paragraph by the Secretary with a person—*

3 “(i) *shall require that the person shall carry out,*
4 *on the land owned or controlled by the person, activi-*
5 *ties that—*

6 “(I) *protect and restore habitat for covered*
7 *species that are species determined to be endan-*
8 *gered species or threatened species pursuant to*
9 *section 4(a)(1);*

10 “(II) *contribute to the conservation of one*
11 *or more covered species; and*

12 “(III) *specify and implement a manage-*
13 *ment plan for the covered species;*

14 “(ii) *shall specify such a management plan that*
15 *includes—*

16 “(I) *identification of the covered species;*

17 “(II) *a description of the land to which the*
18 *agreement applies; and*

19 “(III) *a description of, and a schedule to*
20 *carry out, the activities under clause (i);*

21 “(iii) *shall provide sufficient documentation to*
22 *establish ownership or control by the person of the*
23 *land to which the agreement applies;*

24 “(iv) *shall include the amounts of the annual*
25 *payments or other compensation to be provided by the*

1 *Secretary to the person under the agreement, and the*
2 *terms under which such payments or compensation*
3 *shall be provided; and*

4 *“(v) shall include—*

5 *“(I) the duties of the person;*

6 *“(II) the duties of the Secretary;*

7 *“(III) the terms and conditions under*
8 *which the person and the Secretary mutually*
9 *agree the agreement may be modified or termi-*
10 *nated; and*

11 *“(IV) acts or omissions by the person or the*
12 *Secretary that shall be considered violations of*
13 *the agreement, and procedures under which no-*
14 *tice of and an opportunity to remedy any viola-*
15 *tion by the person or the Secretary shall be*
16 *given.*

17 *“(C) In entering into species recovery agreements*
18 *under this paragraph, the Secretary shall accord priority*
19 *to agreements that apply to any areas that are identified*
20 *in recovery plans pursuant to subsection (c)(1)(A)(iv).*

21 *“(3)(A) The Secretary and persons who own private*
22 *land may enter into species conservation contract agree-*
23 *ments with terms of 30 years, 20 years, or 10 years that*
24 *meet the criteria set forth in subparagraph (B) and stand-*

1 *ards set forth in subparagraph (D) and are in accordance*
 2 *with the priorities established in subparagraph (C).*

3 *“(B) A species conservation contract agreement entered*
 4 *into under this paragraph by the Secretary with a person—*

5 *“(i) shall provide that the person shall, on the*
 6 *land owned by the person—*

7 *“(I) carry out conservation practices to*
 8 *meet one or more of the goals set forth in clauses*
 9 *(i) through (iii) of subparagraph (C) for one or*
 10 *more covered species, that are species that are de-*
 11 *termined to be endangered species or threatened*
 12 *species pursuant to section 4(a)(1), species deter-*
 13 *mined to be candidate species pursuant to sec-*
 14 *tion 4(b)(3)(B)(iii), or species subject to com-*
 15 *parable designations under State law; and*

16 *“(II) specify and implement a management*
 17 *plan for the covered species;*

18 *“(ii) shall specify such a management plan that*
 19 *includes—*

20 *“(I) identification of the covered species;*

21 *“(II) a description in detail of the conserva-*
 22 *tion practices for the covered species that the per-*
 23 *son shall undertake;*

24 *“(III) a description of the land to which the*
 25 *agreement applies;*

1 “(IV) a schedule of approximate deadlines,
2 whether one-time or periodic, for undertaking the
3 conservation practices described pursuant to sub-
4 clause (II); and

5 “(V) a description of existing or future eco-
6 nomic activities on the land to which the agree-
7 ment applies that are compatible with the con-
8 servation practices described pursuant to sub-
9 clause (II) and generally with conservation of
10 the covered species;

11 “(iii) shall specify the term of the agreement;
12 and

13 “(iv) shall include—

14 “(I) the duties of the person;

15 “(II) the duties of the Secretary;

16 “(III) the terms and conditions under
17 which the person and the Secretary mutually
18 agree the agreement may be modified or termi-
19 nated;

20 “(IV) acts or omissions by the person or the
21 Secretary that shall be considered violations of
22 the agreement, and procedures under which no-
23 tice of and an opportunity to remedy any viola-
24 tion by the person or the Secretary shall be
25 given; and

1 “(V) terms and conditions for early termi-
2 nation of the agreement by the person before the
3 management plan is fully implemented or termi-
4 nation of the agreement by the Secretary in the
5 case of a violation by the person that is not rem-
6 edied under subclause (IV), including any re-
7 quirement for the person to refund all or part of
8 any payments received under subparagraph (E)
9 and any interest thereon.

10 “(C) The Secretary shall establish priorities for the se-
11 lection of species conservation contract agreements, or
12 groups of such agreements for adjacent or proximate lands,
13 to be entered into under this paragraph that address the
14 following factors:

15 “(i) The potential of the land to which the agree-
16 ment or agreements apply to contribute significantly
17 to the conservation of an endangered species or threat-
18 ened species or a species with a comparable designa-
19 tion under State law.

20 “(ii) The potential of such land to contribute sig-
21 nificantly to the improvement of the status of a can-
22 didate species or a species with a comparable designa-
23 tion under State law.

24 “(iii) The amount of acreage of such land.

1 “(iv) *The number of covered species in the agree-*
2 *ment or agreements.*

3 “(v) *The degree of urgency for the covered species*
4 *to implement the conservation practices in the man-*
5 *agement plan or plans under the agreement or agree-*
6 *ments.*

7 “(vi) *Land in close proximity to military test*
8 *and training ranges, installations, and associated*
9 *airspace that is affected by a covered species.*

10 “(D) *The Secretary shall enter into a species conserva-*
11 *tion contract agreement submitted by a person, if the Sec-*
12 *retary finds that the person owns such land or has sufficient*
13 *control over the use of such land to ensure implementation*
14 *of the management plan under the agreement.*

15 “(E)(i) *Upon entering into a species conservation con-*
16 *tract agreement with the Secretary pursuant to this para-*
17 *graph, a person shall receive the financial assistance pro-*
18 *vided for in this subparagraph.*

19 “(ii) *If the person is implementing fully the agreement,*
20 *the person shall receive from the Secretary—*

21 “(I) *in the case of a 30-year agreement, an an-*
22 *nuual contract payment in an amount equal to 100*
23 *percent of the person’s actual costs to implement the*
24 *conservation practices described in the management*
25 *plan under the terms of the agreement;*

1 “(II) in the case of a 20-year agreement, an an-
2 nual contract payment in an amount equal to 80 per-
3 cent of the person’s actual costs to implement the con-
4 servation practices described in the management plan
5 under the terms of the agreement; and

6 “(III) in the case of a 10-year agreement, an an-
7 nual contract payment in an amount equal to 60 per-
8 cent of the person’s actual costs to implement the con-
9 servation practices described in the management plan
10 under the terms of the agreement.

11 “(iii)(I) If the person receiving contract payments
12 pursuant to clause (ii) receives any other State or Federal
13 funds to defray the cost of any conservation practice, the
14 cost of such practice shall not be eligible for such contract
15 payments.

16 “(II) Contributions of agencies or organizations to any
17 conservation practice other than the funds described in sub-
18 clause (I) shall not be considered as costs of the person for
19 purposes of the contract payments pursuant to clause (iii).

20 “(4)(A) Upon request of a person seeking to enter into
21 an agreement pursuant to this subsection, the Secretary
22 may provide to such person technical assistance in the prep-
23 aration, and management training for the implementation,
24 of the management plan for the agreement.

1 “(B) Any State agency, local government, nonprofit
2 organization, or federally recognized Indian tribe may pro-
3 vide assistance to a person in the preparation of a manage-
4 ment plan, or participate in the implementation of a man-
5 agement plan, including identifying and making available
6 certified fisheries or wildlife biologists with expertise in the
7 conservation of species for purposes of the preparation or
8 review and approval of management plans for species con-
9 servation contract agreements under paragraph (3)(D)(iii).

10 “(5) Upon any conveyance or other transfer of interest
11 in land that is subject to an agreement under this sub-
12 section—

13 “(A) the agreement shall terminate if the agree-
14 ment does not continue in effect under subparagraph
15 (B);

16 “(B) the agreement shall continue in effect with
17 respect to such land, with the same terms and condi-
18 tions, if the person to whom the land or interest is
19 conveyed or otherwise transferred notifies the Sec-
20 retary of the person’s election to continue the agree-
21 ment by no later than 30 days after the date of the
22 conveyance or other transfer and the person is deter-
23 mined by the Secretary to qualify to enter into an
24 agreement under this subsection; or

1 “(C) the person to whom the land or interest is
2 conveyed or otherwise transferred may seek a new
3 agreement under this subsection.

4 “(6) An agreement under this subsection may be re-
5 newed with the mutual consent of the Secretary and the
6 person who entered into the agreement or to whom the
7 agreement has been transferred under paragraph (5).

8 “(7) The Secretary shall make annual payments under
9 this subsection as soon as possible after December 31 of each
10 calendar year.

11 “(8) An agreement under this subsection that applies
12 to an endangered species or threatened species shall, for the
13 purpose of section 10(a)(4), be deemed to be a permit to
14 enhance the propagation or survival of such species under
15 section 10(a)(1), and a person in full compliance with the
16 agreement shall be afforded the protection of section
17 10(a)(4).

18 “(9) The Secretary, or any other Federal official, may
19 not require a person to enter into an agreement under this
20 subsection as a term or condition of any right, privilege,
21 or benefit, or of any action or refraining from any action,
22 under this Act.”.

23 (2) Subsection (e)(2) of section 7 (16 U.S.C.
24 1536) (as redesignated by section 11(d)(2) of this Act)

1 *is amended by inserting “or in an agreement under*
 2 *section 5(m)” after “section”.*

3 *(d) CONFORMING AMENDMENTS.—*

4 *(1) Section 6(d)(1) (16 U.S.C. 1535(d)(1)) is*
 5 *amended by striking “section 4(g)” and inserting*
 6 *“section 5(j)”.*

7 *(2) The Marine Mammal Protection Act of 1972*
 8 *is amended—*

9 *(A) in section 104(c)(4)(A)(ii) (16 U.S.C.*
 10 *1374(c)(4)(A)(ii)) by striking “section 4(f)” and*
 11 *inserting “section 5”; and*

12 *(B) in section 115(b)(2) (16 U.S.C.*
 13 *1383b(b)(2)) by striking “section 4(f) of the En-*
 14 *dangered Species Act of 1973 (16 U.S.C.*
 15 *1533(f))” and inserting “section 5 of the Endan-*
 16 *gered Species Act of 1973”.*

17 **SEC. 10. COOPERATION WITH STATES AND INDIAN TRIBES.**

18 *Section 6 (16 U.S.C. 1535) is further amended—*

19 *(1) in subsection (c), by adding at the end the*
 20 *following:*

21 *“(3)(A) Any cooperative agreement entered into by the*
 22 *Secretary under this subsection may also provide for devel-*
 23 *opment of a program for conservation of species determined*
 24 *to be candidate species pursuant to section 4(b)(3)(B)(iii)*
 25 *or any other species that the State and the Secretary agree*

1 *is at risk of being determined to be an endangered species*
 2 *or threatened species under section 4(a)(1) in that State.*
 3 *Upon completion of consultation on the agreement pursuant*
 4 *to subsection (e)(2), any incidental take statement issued*
 5 *on the agreement shall apply to any such species, and to*
 6 *the State and any landowners enrolled in any program*
 7 *under the agreement, without further consultation (except*
 8 *any additional consultation pursuant to subsection (e)(2))*
 9 *if the species is subsequently determined to be an endan-*
 10 *gered species or a threatened species and the agreement re-*
 11 *mains an adequate and active program for the conservation*
 12 *of endangered species and threatened species.*

13 “(B) *Any cooperative agreement entered into by the*
 14 *Secretary under this subsection may also provide for moni-*
 15 *toring or assistance in monitoring the status of candidate*
 16 *species pursuant to section 4(b)(3)(C)(iii) or recovered spe-*
 17 *cies pursuant to section 5(j).*

18 “(C) *The Secretary shall periodically review each coop-*
 19 *erative agreement under this subsection and seek to make*
 20 *changes the Secretary considers necessary for the conserva-*
 21 *tion of endangered species and threatened species to which*
 22 *the agreement applies.*

23 “(4) *Any cooperative agreement entered into by the*
 24 *Secretary under this subsection that provides for the enroll-*
 25 *ment of private lands or water rights in any program estab-*

1 lished by the agreement shall ensure that the decision to
 2 enroll is voluntary for each owner of such lands or water
 3 rights.

4 “(5)(A) The Secretary may enter into a cooperative
 5 agreement under this subsection with an Indian tribe in
 6 substantially the same manner in which the Secretary may
 7 enter into a cooperative agreement with a State.

8 “(B) For the purposes of this paragraph, the term ‘In-
 9 dian tribe’ means—

10 “(i) with respect to the 48 contiguous States, any
 11 federally recognized Indian tribe, organized band,
 12 pueblo, or community; and

13 “(ii) with respect to Alaska, the Metlakatla In-
 14 dian Community.”;

15 (2) in subsection (d)(1)—

16 (A) by striking “pursuant to subsection (c)
 17 of this section”;

18 (B) by striking “or to assist” and all that
 19 follows through “section 5(j)” and inserting
 20 “pursuant to subsection (c)(1) and (2) or to ad-
 21 dress candidate species or other species at risk
 22 and recovered species pursuant to subsection
 23 (c)(3)”; and

24 (C) in subparagraph (F), by striking “mon-
 25 itoring the status of candidate species” and in-

1 serting “developing a conservation program for,
2 or monitoring the status of, candidate species or
3 other species determined to be at risk pursuant
4 to subsection (c)(3)”; and
5 (3) in subsection (e)—

6 (A) by inserting “(1)” before the first sen-
7 tence;

8 (B) in paragraph (1), as designated by sub-
9 paragraph (A) of this paragraph, by striking “at
10 no greater than annual intervals” and inserting
11 “every 3 years”; and

12 (C) by adding at the end the following:

13 “(2) Any cooperative agreement entered into by the
14 Secretary under subsection (c) shall be subject to section
15 7(a)(2) through (d) and regulations implementing such pro-
16 visions only before—

17 “(A) the Secretary enters into the agreement;
18 and

19 “(B) the Secretary approves any renewal of, or
20 amendment to, the agreement that—

21 “(i) addresses species that are determined to
22 be endangered species or threatened species, are
23 not addressed in the agreement, and may be af-
24 fected by the agreement; or

1 “(ii) new information about any species ad-
2 dressed in the agreement that the Secretary de-
3 termines—

4 “(I) constitutes the best available sci-
5 entific data; and

6 “(II) indicates that the agreement may
7 have adverse effects on the species that had
8 not been considered previously when the
9 agreement was entered into or during any
10 revision thereof or amendment thereto.

11 “(3) The Secretary may suspend any cooperative
12 agreement established pursuant to subsection (c), after con-
13 sultation with the Governor of the affected State, if the Sec-
14 retary finds during the periodic review required by para-
15 graph (1) of this subsection that the agreement no longer
16 constitutes an adequate and active program for the con-
17 servation of endangered species and threatened species.

18 “(4) The Secretary may terminate any cooperative
19 agreement entered into by the Secretary under subsection
20 (c), after consultation with the Governor of the affected
21 State, if—

22 “(A) as result of the procedures of section 7(a)(2)
23 through (d) undertaken pursuant to paragraph (2) of
24 this subsection, the Secretary determines that contin-
25 ued implementation of the cooperative agreement is

1 *likely to jeopardize the continued existence of endan-*
 2 *gered species or threatened species, and the coopera-*
 3 *tive agreement is not amended or revised to incor-*
 4 *porate a reasonable and prudent alternative offered*
 5 *by the Secretary pursuant to section 7(b)(3); or*

6 *“(B) the cooperative agreement has been sus-*
 7 *pended under paragraph (3) of this subsection and*
 8 *has not been amended or revised and found by the*
 9 *Secretary to constitute an adequate and active pro-*
 10 *gram for the conservation of endangered species and*
 11 *threatened species within 180 days after the date of*
 12 *the suspension.”.*

13 **SEC. 11. INTERAGENCY COOPERATION AND CONSULTA-**
 14 **TION.**

15 *(a) CONSULTATION REQUIREMENT.—Section 7(a) (16*
 16 *U.S.C. 1536(a)) is amended—*

17 *(1) in paragraph (1) in the second sentence, by*
 18 *striking “endangered species” and all that follows*
 19 *through the end of the sentence and inserting “species*
 20 *determined to be endangered species and threatened*
 21 *species under section 4.”;*

22 *(2) in paragraph (2)—*

23 *(A) in the first sentence by striking “ac-*
 24 *tion” the first place it appears and all that fol-*
 25 *lows through “is not” and inserting “agency ac-*

1 *tion authorized, funded, or carried out by such*
 2 *agency is not”;*

3 *(B) in the first sentence by striking “, un-*
 4 *less” and all that follows through the end of the*
 5 *sentence and inserting a period;*

6 *(C) in the second sentence, by striking “best*
 7 *scientific and commercial data available” and*
 8 *inserting “best available scientific data”; and*

9 *(D) by inserting “(A)” before the first sen-*
 10 *tence, and by adding at the end the following:*

11 *“(B) The Secretary may identify specific agency ac-*
 12 *tions or categories of agency actions that may be determined*
 13 *to meet the standards of this paragraph by alternative pro-*
 14 *cedures to the procedures set forth in this subsection and*
 15 *subsections (b) through (d), except that subsections (b)(4)*
 16 *and (e) may apply only to an action that the Secretary*
 17 *finds, or concurs, does meet such standards, and the Sec-*
 18 *retary shall suggest, or concur in any suggested, reasonable*
 19 *and prudent alternatives described in subsection (b)(3) for*
 20 *any action determined not to meet such standards. Any*
 21 *such agency action or category of agency actions shall be*
 22 *identified, and any such alternative procedures shall be es-*
 23 *tablished, by regulation promulgated prior or subsequent to*
 24 *the date of the enactment of this Act.”;*

25 *(3) in paragraph (4)—*

1 (A) by striking “listed under section 4” and
2 inserting “an endangered species or a threatened
3 species”; and

4 (B) by inserting “, under section 4” after
5 “such species”; and

6 (4) by adding at the end the following:

7 “(5) Any Federal agency or the Secretary, in con-
8 ducting any analysis pursuant to paragraph (2), shall con-
9 sider only the effects of any agency action that are distinct
10 from a baseline of all effects upon the relevant species that
11 have occurred or are occurring prior to the action.”.

12 (b) *OPINION OF SECRETARY*.—Section 7(b) (16 U.S.C.
13 1536(b)) is amended—

14 (1) in paragraph (1)(B)(i) by inserting “permit
15 or license” before “applicant”;

16 (2) in paragraph (2) by inserting “permit or li-
17 cense” before “applicant”;

18 (3) in paragraph (3)(A)—

19 (A) in the first sentence—

20 (i) by striking “Promptly after” and
21 inserting “Before”;

22 (ii) by inserting “permit or license”
23 before “applicant”; and

24 (iii) by inserting “proposed” before
25 “written statement”; and

1 (B) by striking all after the first sentence
2 and inserting the following: “The Secretary shall
3 consider any comment from the Federal agency
4 and the permit or license applicant, if any,
5 prior to issuance of the final written statement
6 of the Secretary’s opinion. The Secretary shall
7 issue the final written statement of the Sec-
8 retary’s opinion by providing the written state-
9 ment to the Federal agency and the permit or li-
10 cense applicant, if any, and publishing notice of
11 the written statement in the Federal Register. If
12 jeopardy is found, the Secretary shall suggest in
13 the final written statement those reasonable and
14 prudent alternatives, if any, that the Secretary
15 believes would not violate subsection (a)(2) and
16 can be taken by the Federal agency or applicant
17 in implementing the agency action. The Sec-
18 retary shall cooperate with the Federal agency
19 and any permit or license applicant in the prep-
20 aration of any suggested reasonable and prudent
21 alternatives.”;

22 (4) in paragraph (4)—

23 (A) by redesignating subparagraphs (A),
24 (B), and (C) as clauses (i), (ii), and (iii), respec-
25 tively;

1 (B) by inserting “(A)” after “(4)”; and

2 (C) by striking “the Secretary shall pro-
3 vide” and all that follows through “with a writ-
4 ten statement that—” and inserting the fol-
5 lowing: “the Secretary shall include in the writ-
6 ten statement under paragraph (3), a statement
7 described in subparagraph (B) of this para-
8 graph.

9 “(B) A statement described in this subparagraph—”;
10 and

11 (5) by adding at the end the following:

12 “(5)(A) Any terms and conditions set forth pursuant
13 to paragraph (4)(B)(iv) shall be roughly proportional to the
14 impact of the incidental taking identified pursuant to para-
15 graph (4) in the written statement prepared under para-
16 graph (3).

17 “(B) If various terms and conditions are available to
18 comply with paragraph (4)(B)(iv), the terms and condi-
19 tions set forth pursuant to that paragraph—

20 “(i) must be capable of successful implementa-
21 tion; and

22 “(ii) must be consistent with the objectives of the
23 Federal agency and the permit or license applicant,
24 if any, to the greatest extent possible.”.

1 (c) *BIOLOGICAL ASSESSMENTS*.—Section 7(c) (16
2 *U.S.C. 1536(c)*) is amended—

3 (1) by striking “(1)”;

4 (2) by striking paragraph (2);

5 (3) in the first sentence, by striking “which is
6 listed” and all that follows through the end of the sen-
7 tence and inserting “that is determined to be an en-
8 dangered species or a threatened species, or for which
9 such a determination is proposed pursuant to section
10 4, may be present in the area of such proposed ac-
11 tion.”; and

12 (4) in the second sentence, by striking “best sci-
13 entific and commercial data available” and inserting
14 “best available scientific data”.

15 (d) *ELIMINATION OF ENDANGERED SPECIES COM-*
16 *MITTEE PROCESS*.—Section 7 (16 *U.S.C. 1536*) is amend-
17 ed—

18 (1) by repealing subsections (e), (f), (g), (h), (i),
19 (j), (k), (l), (m), and (n);

20 (2) by redesignating subsections (o) and (p) as
21 subsections (e) and (f), respectively;

22 (3) in subsection (e), as redesignated by para-
23 graph (2) of this subsection—

24 (A) in the heading, by striking “EXEMP-
25 TION AS PROVIDING”; and

1 (B) by striking “such section” and all that
 2 follows through “(2)” and inserting “such sec-
 3 tion,”; and

4 (4) in subsection (f), as redesignated by para-
 5 graph (2) of this subsection—

6 (A) in the first sentence, by striking “is au-
 7 thorized” and all that follows through “of this
 8 section” and inserting “may exempt an agency
 9 action from compliance with the requirements of
 10 subsections (a) through (d) of this section before
 11 the initiation of such agency action,”; and

12 (B) by striking the second sentence.

13 **SEC. 12. EXCEPTIONS TO PROHIBITIONS.**

14 (a) *INCIDENTAL TAKE PERMITS.*—Section 10(a)(2)
 15 (16 U.S.C. 1539(a)(2)) is amended—

16 (1) in subparagraph (A) by striking “and” after
 17 the semicolon at the end of clause (iii), by redesign-
 18 ating clause (iv) as clause (vii), and by inserting
 19 after clause (iii) the following:

20 “(iv) objective, measurable biological goals to be
 21 achieved for species covered by the plan and specific
 22 measures for achieving such goals consistent with the
 23 requirements of subparagraph (B);

24 “(v) measures the applicant will take to monitor
 25 impacts of the plan on covered species and the effec-

1 *tiveness of the plan’s measures in achieving the plan’s*
2 *biological goals;*

3 *“(vi) adaptive management provisions necessary*
4 *to respond to all reasonably foreseeable changes in cir-*
5 *cumstances that could appreciably reduce the likeli-*
6 *hood of the survival and recovery of any species cov-*
7 *ered by the plan; and”;*

8 *(2) in subparagraph (B) by striking “and” after*
9 *the semicolon at the end of clause (iv), by redesign-*
10 *ating clause (v) as clause (vi), and by inserting after*
11 *clause (iv) the following:*

12 *“(v) the term of the permit is reasonable, taking*
13 *into consideration—*

14 *“(I) the period in which the applicant can*
15 *be expected to diligently complete the principal*
16 *actions covered by the plan;*

17 *“(II) the extent to which the plan will en-*
18 *hance the conservation of covered species;*

19 *“(III) the adequacy of information under-*
20 *lying the plan;*

21 *“(IV) the length of time necessary to imple-*
22 *ment and achieve the benefits of the plan; and*

23 *“(V) the scope of the plan’s adaptive man-*
24 *agement strategy; and”;* and

1 (3) by striking subparagraph (C) and inserting
2 the following:

3 “(3) Any terms and conditions offered by the Secretary
4 pursuant to paragraph (2)(B) to reduce or offset the im-
5 pacts of incidental taking shall be roughly proportional to
6 the impact of the incidental taking specified in the con-
7 servation plan pursuant to in paragraph (2)(A)(i). This
8 paragraph shall not be construed to limit the authority of
9 the Secretary to require greater than acre-for-acre mitiga-
10 tion where necessary to address the extent of such impacts.
11 In any case in which various terms and conditions are
12 available, the terms and conditions shall be capable of suc-
13 cessful implementation and shall be consistent with the ob-
14 jective of the applicant to the greatest extent possible.

15 “(4)(A) If the holder of a permit issued under this sub-
16 section for other than scientific purposes is in compliance
17 with the terms and conditions of the permit, and any con-
18 servation plan or agreement incorporated by reference
19 therein, the Secretary may not require the holder, without
20 the consent of the holder, to adopt any new minimization,
21 mitigation, or other measure with respect to any species
22 adequately covered by the permit during the term of the
23 permit, except as provided in subparagraphs (B) and (C)
24 to meet circumstances that have changed subsequent to the
25 issuance of the permit.

1 “(B) *For any circumstance identified in the permit*
2 *or incorporated document that has changed, the Secretary*
3 *may, in the absence of consent of the permit holder, require*
4 *only such additional minimization, mitigation, or other*
5 *measures as are already provided in the permit or incor-*
6 *porated document for such changed circumstance.*

7 “(C) *For any changed circumstance not identified in*
8 *the permit or incorporated document, the Secretary may,*
9 *in the absence of consent of the permit holder, require only*
10 *such additional minimization, mitigation, or other meas-*
11 *ures to address such changed circumstance that do not in-*
12 *volve the commitment of any additional land, water, or fi-*
13 *nancial compensation not otherwise committed, or the im-*
14 *position of additional restrictions on the use of any land,*
15 *water or other natural resources otherwise available for de-*
16 *velopment or use, under the original terms and conditions*
17 *of the permit or incorporated document.*

18 “(D) *The Secretary shall have the burden of proof in*
19 *demonstrating and documenting, with the best available sci-*
20 *entific data, the occurrence of any changed circumstances*
21 *for purposes of this paragraph.*

22 “(E) *All permits issued under this subsection on or*
23 *after the date of the enactment of the Threatened and En-*
24 *dangered Species Recovery Act of 2005, other than permits*
25 *for scientific purposes, shall contain the assurances con-*

1 tained in subparagraphs (B) through (D) of this paragraph
 2 and paragraph (5)(A) and (B). Permits issued under this
 3 subsection on or after March 25, 1998, and before the date
 4 of the enactment of the Threatened and Endangered Species
 5 Recovery Act of 2005, other than permits for scientific pur-
 6 poses, shall be governed by the applicable sections of parts
 7 17.22(b), (c), and (d), and 17.32(b), (c), and (d) of title
 8 50, Code of Federal Regulations, as the same exist on the
 9 date of the enactment of the Threatened and Endangered
 10 Species Act of 2005.

11 “(5)(A) The Secretary shall revoke a permit issued
 12 under paragraph (2) if the Secretary finds that the per-
 13 mittee is not complying with the terms and conditions of
 14 the permit.

15 “(B) Any permit subject to paragraph (4)(A) may be
 16 revoked due to changed circumstances only if—

17 “(i) the Secretary determines that continuation
 18 of the activities to which the permit applies would be
 19 inconsistent with the criteria in paragraph
 20 (2)(B)(iv);

21 “(ii) the Secretary provides 60 days notice of
 22 revocation to the permittee; and

23 “(iii) the Secretary is unable to, and the per-
 24 mittee chooses not to, remedy the condition causing
 25 such inconsistency.”.

1 (b) *EXTENSION OF PERIOD FOR PUBLIC REVIEW AND*
 2 *COMMENT ON APPLICATIONS.*—Section 10(c) (16 U.S.C.
 3 1539(c)) is amended in the second sentence by striking
 4 “thirty” each place it appears and inserting “45”.

5 (c) *EXPERIMENTAL POPULATIONS.*—Section 10(j) (16
 6 U.S.C. 1539(j)) is amended—

7 (1) in paragraph (1), by striking “For purposes”
 8 and all that follows through the end of the paragraph
 9 and inserting the following: “For purposes of this sub-
 10 section, the term ‘experimental population’ means
 11 any population (including any offspring arising
 12 therefrom) authorized by the Secretary for release
 13 under paragraph (2), but only when such population
 14 is in the area designated for it by the Secretary, and
 15 such area is, at the time of release, wholly separate
 16 geographically from areas occupied by nonexperi-
 17 mental populations of the same species. For purposes
 18 of this subsection, the term ‘areas occupied by non-
 19 experimental populations’ means areas characterized
 20 by the sustained and predictable presence of more
 21 than negligible numbers of successfully reproducing
 22 individuals over a period of many years.”;

23 (2) in paragraph (2)(B), by striking “informa-
 24 tion” and inserting “scientific data”; and

1 (3) in paragraph (2)(C)(i), by striking “listed”
 2 and inserting “determined to be an endangered spe-
 3 cies or a threatened species”.

4 (d) WRITTEN DETERMINATION OF COMPLIANCE.—Sec-
 5 tion 10 (16 U.S.C. 1539) is amended by adding at the end
 6 the following:

7 “(k) WRITTEN DETERMINATION OF COMPLIANCE.—(1)
 8 A property owner (in this subsection referred to as a ‘re-
 9 quester’) may request the Secretary to make a written deter-
 10 mination that a proposed use of the owner’s property that
 11 is lawful under State and local law will comply with sec-
 12 tion 9(a), by submitting a written description of the pro-
 13 posed action to the Secretary by certified mail.

14 “(2) A written description of a proposed use is deemed
 15 to be sufficient for consideration by the Secretary under
 16 paragraph (1) if the description includes—

17 “(A) the nature, the specific location, the lawfulness
 18 under State and local law, and the anticipated
 19 schedule and duration of the proposed use, and a
 20 demonstration that the property owner has the means
 21 to undertake the proposed use; and

22 “(B) any anticipated adverse impact to a species
 23 that is included on a list published under 4(c)(1) that
 24 the requestor reasonably expects to occur as a result
 25 of the proposed use.

1 “(3) *The Secretary may request and the requestor may*
2 *supply any other information that either believes will assist*
3 *the Secretary to make a determination under paragraph*
4 *(1).*

5 “(4) *If the Secretary does not make a determination*
6 *pursuant to a request under this subsection because of the*
7 *omission from the request of any information described in*
8 *paragraph (2), the requestor may submit a subsequent re-*
9 *quest under this subsection for the same proposed use.*

10 “(5)(A) *Subject to subparagraph (B), the Secretary*
11 *shall provide to the requestor a written determination of*
12 *whether the proposed use, as proposed by the requestor, will*
13 *comply with section 9(a), by not later than expiration of*
14 *the 180-day period beginning on the date of the submission*
15 *of the request.*

16 “(B) *The Secretary may request, and the requestor*
17 *may grant, a written extension of the period under sub-*
18 *paragraph (A).*

19 “(6) *If the Secretary fails to provide a written deter-*
20 *mination before the expiration of the period under para-*
21 *graph (5)(A) (or any extension thereof under paragraph*
22 *(5)(B)), the Secretary is deemed to have determined that*
23 *the proposed use complies with section 9(a).*

1 “(7) *This subsection shall not apply with respect to*
2 *agency actions that are subject to consultation under section*
3 *7.*

4 “(8) *Any use or action taken by the property owner*
5 *in reasonable reliance on a written determination of com-*
6 *pliance under paragraph (5) or on the application of para-*
7 *graph (6) shall not be treated as a violation of section 9(a).*

8 “(9) *Any determination of compliance under this sub-*
9 *section shall remain effective—*

10 “(A) *in the case of a written determination pro-*
11 *vided under paragraph (5)(A), for the 10-year period*
12 *beginning on the date the written determination is*
13 *provided; or*

14 “(B) *in the case of a determination that under*
15 *paragraph (6) the Secretary is deemed to have made,*
16 *the 5-year period beginning on the first date the Sec-*
17 *retary is deemed to have made the determination.*

18 “(10) *The Secretary may withdraw a determination*
19 *of compliance under this section only if the Secretary deter-*
20 *mines that, because of unforeseen changed circumstances,*
21 *the continuation of the use to which the determination ap-*
22 *plies would preclude conservation measures essential to the*
23 *survival of any endangered species or threatened species.*
24 *Such a withdrawal shall take effect 10 days after the date*

1 *the Secretary provides notice of the withdrawal to the re-*
 2 *quester.*

3 “(11) *The Secretary may extend the period that ap-*
 4 *plies under paragraph (5) by up to 180 days if seasonal*
 5 *considerations make a determination impossible within the*
 6 *period that would otherwise apply.”.*

7 (e) *NATIONAL SECURITY EXEMPTION.—Section 10 (16*
 8 *U.S.C. 1539) is further amended by adding at the end the*
 9 *following:*

10 “(l) *NATIONAL SECURITY.—The President, after con-*
 11 *sultation with the appropriate Federal agency, may exempt*
 12 *any act or omission from the provisions of this Act if such*
 13 *exemption is necessary for national security.”.*

14 (f) *DISASTER DECLARATION AND PROTECTION.—Sec-*
 15 *tion 10 (16 U.S.C. 1539) is further amended by adding at*
 16 *the end the following:*

17 “(m) *DISASTER DECLARATION AND PROTECTION.—(1)*
 18 *The President may suspend the application of any provi-*
 19 *sion of this Act in any area for which a major disaster*
 20 *is declared under the Robert T. Stafford Disaster Relief and*
 21 *Emergency Assistance Act (42 U.S.C. 5121 et seq.).*

22 “(2) *The Secretary shall, within one year after the date*
 23 *of the enactment of the Threatened and Endangered Species*
 24 *Recovery Act of 2005, promulgate regulations regarding ap-*
 25 *plication of this Act in the event of an emergency (including*

1 *circumstances other than a major disaster referred to in*
 2 *paragraph (1)) involving a threat to human health or safety*
 3 *or to property, including regulations—*

4 “(A) *determining what constitutes an emergency*
 5 *for purposes of this paragraph; and*

6 “(B) *to address immediate threats through expedited consideration under or waiver of any provision*
 7 *of this Act.”.*

9 **SEC. 13. PRIVATE PROPERTY CONSERVATION.**

10 *Section 13 (consisting of amendments to other laws,*
 11 *which have executed) is amended to read as follows:*

12 “PRIVATE PROPERTY CONSERVATION

13 “SEC. 13. (a) *IN GENERAL.—The Secretary may provide conservation grants (in this section referred to as*
 14 *‘grants’) to promote the voluntary conservation of endangered species and threatened species by owners of private*
 15 *property and shall provide financial conservation aid (in*
 16 *this section referred to as ‘aid’) to alleviate the burden of*
 17 *conservation measures imposed upon private property owners by this Act. The Secretary may provide technical assistance when requested to enhance the conservation effects of*
 18 *grants or aid.*

23 “(b) *AWARDING OF GRANTS AND AID.—Grants to promote conservation of endangered species and threatened species on private property—*

1 “(1) may not be used to fund litigation, general
2 education, general outreach, lobbying, or solicitation;

3 “(2) may not be used to acquire leases or ease-
4 ments of more than 50 years duration or fee title to
5 private property;

6 “(3) must be designed to directly contribute to
7 the conservation of an endangered species or threat-
8 ened species by increasing the species’ numbers or dis-
9 tribution; and

10 “(4) must be supported by any private property
11 owners on whose property any grant funded activities
12 are carried out.

13 “(c) *PRIORITY.*—Priority shall be accorded among
14 grant requests in the following order:

15 “(1) Grants that promote conservation of endan-
16 gered species or threatened species on private property
17 while making economically beneficial and productive
18 use of the private property on which the conservation
19 activities are conducted.

20 “(2) Grants that develop, promote, or use tech-
21 niques to increase the distribution or population of
22 an endangered species or threatened species on private
23 property.

1 “(3) *Other grants that promote voluntary con-*
 2 *servation of endangered species or threatened species*
 3 *on private property.*

4 “(d) *ELIGIBILITY FOR AID.—(1) The Secretary shall*
 5 *award aid to private property owners who—*

6 “(A) *received a written determination under sec-*
 7 *tion 10(k) finding that the proposed use of private*
 8 *property would not comply with section 9(a); or*

9 “(B) *receive notice under section 10(k)(10) that*
 10 *a written determination has been withdrawn.*

11 “(2) *Aid shall be in an amount no less than the fair*
 12 *market value of the use that was proposed by the property*
 13 *owner if—*

14 “(A) *the owner has foregone the proposed use;*

15 “(B) *the owner has requested financial aid—*

16 “(i) *within 180 days of the Secretary’s*
 17 *issuance of a written determination that the pro-*
 18 *posed use would not comply with section 9(a); or*

19 “(ii) *within 180 days after the property*
 20 *owner is notified of a withdrawal under section*
 21 *10(k)(10); and*

22 “(C) *the foregone use would be lawful under*
 23 *State and local law and the property owner has dem-*
 24 *onstrated that the property owner has the means to*
 25 *undertake the proposed use.*

1 “(e) *DISTRIBUTION OF GRANTS AND AID.*—(1) *The*
2 *Secretary shall pay eligible aid—*

3 “(A) *within 180 days after receipt of a request*
4 *for aid unless there are unresolved questions regard-*
5 *ing the documentation of the foregone proposed use or*
6 *unresolved questions regarding the fair market value;*
7 *or*

8 “(B) *at the resolution of any questions con-*
9 *cerning the documentation of the foregone use estab-*
10 *lished under subsection (f) or the fair market value es-*
11 *tablished under subsection (g).*

12 “(2) *All grants provided under this section shall be*
13 *paid on the last day of the fiscal year. Aid shall be paid*
14 *based on the date of the initial request.*

15 “(f) *DOCUMENTATION OF THE FOREGONE USE.*—
16 *Within 30 days of the request for aid, the Secretary shall*
17 *enter into negotiations with the property owner regarding*
18 *the documentation of the foregone proposed use through such*
19 *mechanisms such as contract terms, lease terms, deed re-*
20 *strictions, easement terms, or transfer of title. If the Sec-*
21 *retary and the property owner are unable to reach an agree-*
22 *ment, then, within 60 days of the request for aid, the Sec-*
23 *retary shall determine how the property owner’s foregone*
24 *use shall be documented with the least impact on the owner-*

1 *ship interests of the property owner necessary to document*
2 *the foregone use.*

3 “(g) *FAIR MARKET VALUE.*—*For purposes of this sec-*
4 *tion, the fair market value of the foregone use of the affected*
5 *portion of the private property, including business losses,*
6 *is what a willing buyer would pay to a willing seller in*
7 *an open market. Fair market value shall take into account*
8 *the likelihood that the foregone use would be approved under*
9 *State and local law. The fair market value shall be deter-*
10 *mined within 180 days of the documentation of the foregone*
11 *use. The fair market value shall be determined jointly by*
12 *2 licensed independent appraisers, one selected by the Sec-*
13 *retary and one selected by the property owner. If the 2 ap-*
14 *praisers fail to agree on fair market value, the Secretary*
15 *and the property owner shall jointly select a third licensed*
16 *appraiser whose appraisal within an additional 90 days*
17 *shall be binding on the Secretary and the private property*
18 *owner. Within one year after the date of enactment of the*
19 *Threatened and Endangered Species Recovery Act of 2005,*
20 *the Secretary shall promulgate regulations regarding selec-*
21 *tion of the jointly selected appraisers under this subsection.*

22 “(h) *LIMITATION ON AID AVAILABILITY.*—*Any person*
23 *receiving aid under this section may not receive additional*
24 *aid under this section for the same foregone use of the same*
25 *property and for the same period of time.*

1 “(i) *ANNUAL REPORTING.*—*The Secretary shall by*
 2 *January 15 of each year provide a report of all aid and*
 3 *grants awarded under this section to the Committee on Re-*
 4 *sources of the House of Representatives and the Environ-*
 5 *ment and Public Works Committee of the Senate and make*
 6 *such report electronically available to the general public on*
 7 *the website required under section 14.”.*

8 **SEC. 14. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.**

9 *Section 14 (relating to repeals of other laws, which*
 10 *have executed) is amended to read as follows:*

11 “*PUBLIC ACCESSIBILITY AND ACCOUNTABILITY*

12 “*SEC. 14.*

13 *The Secretary shall make available on a publicly acces-*
 14 *sible website on the Internet—*

15 “(1) *each list published under section 4(c)(1);*

16 “(2) *all final and proposed regulations and de-*
 17 *terminations under section 4;*

18 “(3) *the results of all 5-year reviews conducted*
 19 *under section 4(c)(2)(A);*

20 “(4) *all draft and final recovery plans issued*
 21 *under section 5(a), and all final recovery plans issued*
 22 *and in effect under section 4(f)(1) of this Act as in*
 23 *effect immediately before the enactment of the Threat-*
 24 *ened and Endangered Species Recovery Act of 2005;*

25 “(5) *all reports required under sections 5(e) and*
 26 *16, and all reports required under sections 4(f)(3)*

1 *and 18 of this Act as in effect immediately before the*
 2 *enactment of the Threatened and Endangered Species*
 3 *Recovery Act of 2005; and*

4 “(6) data contained in the reports referred to in
 5 paragraph (5) of this section, and that were produced
 6 after the date of enactment of the Threatened and En-
 7 dangered Species Recovery Act of 2005, in the form
 8 of databases that may be searched by the variables in-
 9 cluded in the reports.”.

10 **SEC. 15. ANNUAL COST ANALYSES.**

11 (a) *ANNUAL COST ANALYSES.*—Section 18 (16 U.S.C.
 12 1544) is amended to read as follows:

13 “ANNUAL COST ANALYSIS BY UNITED STATES FISH AND
 14 WILDLIFE SERVICE

15 “SEC. 18. (a) *IN GENERAL.*—On or before January 15
 16 of each year, the Secretary shall submit to the Congress an
 17 annual report covering the preceding fiscal year that con-
 18 tains an accounting of all reasonably identifiable expendi-
 19 tures made primarily for the conservation of species in-
 20 cluded on lists published and in effect under section 4(c).

21 “(b) *SPECIFICATION OF EXPENDITURES.*—Each report
 22 under this section shall specify—

23 “(1) expenditures of Federal funds on a species-
 24 by-species basis, and expenditures of Federal funds
 25 that are not attributable to a specific species;

1 “(2) expenditures by States for the fiscal year
 2 covered by the report on a species-by-species basis,
 3 and expenditures by States that are not attributable
 4 to a specific species; and

5 “(3) based on data submitted pursuant to sub-
 6 section (c), expenditures voluntarily reported by local
 7 governmental entities on a species-by-species basis,
 8 and such expenditures that are not attributable to a
 9 specific species.

10 “(c) *ENCOURAGEMENT OF VOLUNTARY SUBMISSION OF*
 11 *DATA BY LOCAL GOVERNMENTS.*—*The Secretary shall pro-*
 12 *vide a means by which local governmental entities may—*

13 “(1) voluntarily submit electronic data regard-
 14 ing their expenditures for conservation of species list-
 15 ed under section 4(c); and

16 “(2) attest to the accuracy of such data.”.

17 (b) *ELIGIBILITY OF STATES FOR FINANCIAL ASSIST-*
 18 *ANCE.*—*Section 6(d) (16 U.S.C. 1535(d)) is amended by*
 19 *adding at the end the following:*

20 “(3) A State shall not be eligible for financial assist-
 21 ance under this section for a fiscal year unless the State
 22 has provided to the Secretary for the preceding fiscal year
 23 information regarding the expenditures referred to in sec-
 24 tion 16(b)(2).”.

1 **SEC. 16. REIMBURSEMENT FOR DEPREDAATION OF LIVE-**
 2 **STOCK BY REINTRODUCED SPECIES.**

3 *The Endangered Species Act of 1973 is further amend-*
 4 *ed—*

5 *(1) by striking sections 15 and 16;*

6 *(2) by redesignating sections 17 and 18 as sec-*
 7 *tions 15 and 16, respectively; and*

8 *(3) by adding after section 16, as so redesign-*
 9 *ated, the following:*

10 *“REIMBURSEMENT FOR DEPREDAATION OF LIVESTOCK BY*
 11 *REINTRODUCED SPECIES*

12 *“SEC. 17. (a) IN GENERAL.—The Secretary of the In-*
 13 *terior, acting through the Director of the United States Fish*
 14 *and Wildlife Service, may reimburse the owner of livestock*
 15 *for any loss of livestock resulting from depredation by any*
 16 *population of a species if the population is listed under sec-*
 17 *tion 4(c) and includes or derives from members of the spe-*
 18 *cies that were reintroduced into the wild.*

19 *“(b) ELIGIBILITY FOR AND AMOUNT.—Eligibility for,*
 20 *and the amount of, reimbursement under this section shall*
 21 *not be conditioned on the presentation of the body of any*
 22 *animal for which reimbursement is sought.*

23 *“(c) LIMITATION ON REQUIREMENT TO PRESENT*
 24 *BODY.—The Secretary may not require the owner of live-*
 25 *stock to present the body of individual livestock as a condi-*
 26 *tion of payment of reimbursement under this section.*

1 “(d) *USE OF DONATIONS.*—*The Secretary may accept*
 2 *and use donations of funds to pay reimbursement under*
 3 *this section.*

4 “(e) *AVAILABILITY OF APPROPRIATIONS.*—*The require-*
 5 *ment to pay reimbursement under this section is subject to*
 6 *the availability of funds for such payments.”.*

7 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

8 (a) *AUTHORIZATION.*—*The Endangered Species Act of*
 9 *1973 is further amended by adding at the end the following:*

10 “*AUTHORIZATION OF APPROPRIATIONS*

11 “*SEC. 18. (a) IN GENERAL.*—*There are authorized to*
 12 *be appropriated to carry out this Act, other than section*
 13 *8A(e)—*

14 “*(1) to the Secretary of the Interior to carry out*
 15 *functions and responsibilities of the Department of*
 16 *the Interior under this Act, such sums as are nec-*
 17 *essary for fiscal years 2006 through 2010; and*

18 “*(2) to the Secretary of Agriculture to carry out*
 19 *functions and responsibilities of the Department of*
 20 *the Interior with respect to the enforcement of this Act*
 21 *and the convention which pertain the importation of*
 22 *plants, such sums as are necessary for fiscal year*
 23 *2006 through 2010.*

24 “(b) *CONVENTION IMPLEMENTATION.*—*There is au-*
 25 *thorized to be appropriated to the Secretary of the Interior*

1 *to carry out section 8A(e) such sums as are necessary for*
 2 *fiscal years 2006 through 2010.”.*

3 (b) *CONFORMING AMENDMENT.*—Section 8(a) (16
 4 *U.S.C. 1537(a)) is amended by striking “section 15” and*
 5 *inserting “section 18”.*

6 **SEC. 18. MISCELLANEOUS TECHNICAL CORRECTIONS.**

7 (a) *INTERNATIONAL COOPERATION.*—Section 8 (16
 8 *U.S.C. 1537) is amended—*

9 (1) *in subsection (a) in the first sentence by*
 10 *striking “any endangered species or threatened species*
 11 *listed” and inserting “any species determined to be*
 12 *an endangered species or a threatened species”; and*

13 (2) *in subsection (b) in paragraph (1), by strik-*
 14 *ing “endangered species and threatened species listed”*
 15 *and inserting “species determined to be endangered*
 16 *species and threatened species”.*

17 (b) *MANAGEMENT AUTHORITY AND SCIENTIFIC AU-*
 18 *THORITY.*—Section 8A (16 *U.S.C. 1537a)) is amended—*

19 (1) *in subsection (a), by striking “of the Interior*
 20 *(hereinafter in this section referred to as the ‘Sec-*
 21 *retary’)”;*

22 (2) *in subsection (d), by striking “Merchant Ma-*
 23 *rine and Fisheries” and inserting “Resources”; and*

24 (3) *in subsection (e)—*

1 (A) in paragraph (1), by striking “of the
2 Interior (hereinafter in this subsection referred to
3 as the ‘Secretary’)”; and

4 (B) by striking paragraph (3) and redesign-
5 ating paragraph (4) as paragraph (3).

6 (c) *PROHIBITED ACTS*.—Section 9 (16 U.S.C. 1538)
7 is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1), in the matter pre-
10 ceding subparagraph (A), by striking “of this
11 Act, with respect to any endangered species of
12 fish or wildlife listed pursuant to section 4 of
13 this Act” and inserting “, with respect to any
14 species of fish or wildlife determined to be an en-
15 dangered species under section 4”;

16 (B) in paragraph (1)(G), by striking
17 “threatened species of fish or wildlife listed pur-
18 suant to section 4 of this Act” and inserting
19 “species of fish or wildlife determined to be a
20 threatened species under section 4”;

21 (C) in paragraph (2), in the matter pre-
22 ceding subparagraph (A) by striking “of this
23 Act, with respect to any endangered species of
24 plants listed pursuant to section 4 of this Act”
25 and inserting “, with respect to any species of

1 *plants determined to be an endangered species*
2 *under section 4”; and*

3 *(D) in paragraph (2)(E), by striking “listed*
4 *pursuant to section 4 of this Act” and inserting*
5 *“determined to be a threatened species under sec-*
6 *tion 4”;*

7 *(2) in subsection (b)—*

8 *(A) by striking “(1)” before “SPECIES” and*
9 *inserting “(1)” before the first sentence;*

10 *(B) in paragraph (1), in the first sentence,*
11 *by striking “adding such” and all that follows*
12 *through “: Provided, That” and inserting “deter-*
13 *mining such fish or wildlife species to be an en-*
14 *dangered species or a threatened species under*
15 *section 4, if”; and*

16 *(C) in paragraph (1), in the second sen-*
17 *tence, by striking “adding such” and all that fol-*
18 *lows through “this Act” and inserting “deter-*
19 *mining such fish or wildlife species to be an en-*
20 *dangered species or a threatened species under*
21 *section 4”;*

22 *(3) in subsection (c)(2)(A), by striking “an en-*
23 *dangered species listed” and inserting “a species de-*
24 *termined to be an endangered species”;*

1 (4) in subsection (d)(1)(A), by striking clause (i)
 2 and inserting the following: “(i) are not determined
 3 to be endangered species or threatened species under
 4 section 4, and”;

5 (5) in subsection (e), by striking clause (1) and
 6 inserting the following: “(1) are not determined to be
 7 endangered species or threatened species under section
 8 4, and”; and

9 (6) in subsection (f)—

10 (A) in paragraph (1), in the first sentence,
 11 by striking clause (A) and inserting the fol-
 12 lowing: “(A) are not determined to be endan-
 13 gered species or threatened species under section
 14 4, and”; and

15 (B) by striking “Secretary of the Interior”
 16 each place it appears and inserting “Secretary”.

17 (d) *HARDSHIP EXEMPTIONS*.—Section 10(b) (16
 18 *U.S.C. 1539(b)*) is amended—

19 (1) in paragraph (1)—

20 (A) by striking “an endangered species”
 21 and all that follows through “section 4 of this
 22 Act” and inserting “an endangered species or a
 23 threatened species and the subsequent determina-
 24 tion that the species is an endangered species or
 25 a threatened species under section 4”;

1 (B) by striking “section 9(a) of this Act”
 2 and inserting “section 9(a)”; and

3 (C) by striking “fish or wildlife listed by the
 4 Secretary as endangered” and inserting “fish or
 5 wildlife determined to be an endangered species
 6 or threatened species by the Secretary”; and
 7 (2) in paragraph (2)—

8 (A) by inserting “or a threatened species”
 9 after “endangered species” each place it appears;
 10 and

11 (B) in subparagraph (B), by striking “list-
 12 ed species” and inserting “endangered species or
 13 threatened species”.

14 (e) *PERMIT AND EXEMPTION POLICY*.—Section 10(d)
 15 (16 U.S.C. 1539(d)) is amended—

16 (1) by inserting “or threatened species” after
 17 “endangered species”; and

18 (2) by striking “of this Act”.

19 (f) *PRE-ACT PARTS AND SCRIMSHAW*.—Section 10(f)
 20 (16 U.S.C. 1539(f)) is amended—

21 (1) by inserting after “(f)” the following: “*PRE-*
 22 *ACT PARTS AND SCRIMSHAW*.—”; and

23 (2) in paragraph (2), by striking “of this Act”
 24 each place it appears.

1 (g) *BURDEN OF PROOF IN SEEKING EXEMPTION OR*
 2 *PERMIT.*—Section 10(g) (16 U.S.C. 1539(g)) is amended by
 3 inserting after “(g)” the following: “*BURDEN OF PROOF IN*
 4 *SEEKING EXEMPTION OR PERMIT.*—”.

5 (h) *ANTIQUE ARTICLES.*—Section 10(h)(1)(B) (16
 6 U.S.C. 1539(h)(1)(B)) is amended by striking “endangered
 7 species or threatened species listed” and inserting “species
 8 determined to be an endangered species or a threatened spe-
 9 cies”.

10 (i) *PENALTIES AND ENFORCEMENT.*—Section 11 (16
 11 U.S.C. 1540) is amended in subsection (e)(3), in the second
 12 sentence, by striking “Such persons” and inserting “Such
 13 a person”.

14 (j) *SUBSTITUTION OF GENDER-NEUTRAL REF-*
 15 *ERENCES.*—

16 (1) “*SECRETARY*” FOR “*HE*”.—The following
 17 provisions are amended by striking “he” each place it
 18 appears and inserting “the Secretary”:

19 (A) Paragraph (4)(C) of section 4(b), as re-
 20 designated by section 5(b)(2) of this Act.

21 (B) Paragraph (5)(B)(ii) of section 4(b), as
 22 redesignated by section 5(b)(2) of this Act.

23 (C) Section 4(b)(7) (16 U.S.C. 1533(b)(7)),
 24 in the matter following subparagraph (B).

25 (D) Section 6 (16 U.S.C. 1535).

1 (E) Section 8(d) (16 U.S.C. 1537(d)).

2 (F) Section 9(f) (16 U.S.C. 1538(f)).

3 (G) Section 10(a) (16 U.S.C. 1539(a)).

4 (H) Section 10(b)(3) (16 U.S.C.
5 1539(b)(3)).

6 (I) Section 10(d) (16 U.S.C. 1539(d)).

7 (J) Section 10(e)(4) (16 U.S.C. 1539(e)(4)).

8 (K) Section 10(f)(4), (5), and (8)(B) (16
9 U.S.C. 1599(f)(4), (5), (8)(B)).

10 (L) Section 11(e)(5) (16 U.S.C. 1540(e)(5)).

11 (2) “PRESIDENT” FOR “HE”.—Section 8(a) (16
12 U.S.C. 1537(a)) is amended in the second sentence by
13 striking “he” and inserting “the President”.

14 (3) “SECRETARY OF THE INTERIOR” FOR
15 “HE”.—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is
16 amended by striking “he” and inserting “the Sec-
17 retary of the Interior”.

18 (4) “PERSON” FOR “HE”.—The following provi-
19 sions are amended by striking “he” each place it ap-
20 pears and inserting “the person”:

21 (A) Section 10(f)(3) (16 U.S.C. 1539(f)(3)).

22 (B) Section 11(e)(3) (16 U.S.C. 1540(e)(3)).

23 (5) “DEFENDANT” FOR “HE”.—The following
24 provisions are amended by striking “he” each place it
25 appears and inserting “the defendant”.

1 (A) Section 11(a)(3) (16 U.S.C.
2 1540(a)(3)).

3 (B) Section 11(b)(3) (16 U.S.C. 1540(b)(3)).

4 (6) REFERENCES TO “HIM”.—

5 (A) Section 4(c)(1) (16 U.S.C. 1533(c)(1))
6 is amended by striking “him or the Secretary of
7 Commerce” each place it appears and inserting
8 “the Secretary”.

9 (B) Paragraph (6) of section 4(b) (16
10 U.S.C. 1533(b)), as redesignated by section
11 5(b)(2) of this Act, is further amended in the
12 matter following subparagraph (B) by striking
13 “him” and inserting “the Secretary”.

14 (C) Section 5(k)(2), as redesignated by sec-
15 tion 9(a)(1) of this Act, is amended by striking
16 “him” and inserting “the Secretary”.

17 (D) Section 7(a)(1) (16 U.S.C. 1536(a)(1))
18 is amended in the first sentence by striking
19 “him” and inserting “the Secretary”.

20 (E) Section 8A(c)(2) (16 U.S.C.
21 1537a(c)(2)) is amended by striking “him” and
22 inserting “the Secretary”.

23 (F) Section 9(d)(2)(A) (16 U.S.C.
24 1538(d)(2)(A)) is amended by striking “him”

1 *each place it appears and inserting “such per-*
 2 *son”.*

3 *(G) Section 10(b)(1) (16 U.S.C. 1539(b)(1))*
 4 *is amended by striking “him” and inserting “the*
 5 *Secretary”.*

6 *(7) REFERENCES TO “HIMSELF OR HERSELF”.—*
 7 *Section 11 (16 U.S.C. 1540) is amended in sub-*
 8 *sections (a)(3) and (b)(3) by striking “himself or her-*
 9 *self” each place it appears and inserting “the defend-*
 10 *ant”.*

11 *(8) REFERENCES TO “HIS”.—*

12 *(A) Section 4(g)(1), as redesignated by sec-*
 13 *tion 8(1) of this Act, is amended by striking*
 14 *“his” and inserting “the”.*

15 *(B) Section 6 (16 U.S.C. 1535) is amend-*
 16 *ed—*

17 *(i) in subsection (d)(2) in the matter*
 18 *following clause (ii) by striking “his” and*
 19 *inserting “the Secretary’s”; and*

20 *(ii) in subsection (e)(1), as designated*
 21 *by section 10(3)(A) of this Act, by striking*
 22 *“his periodic review” and inserting “peri-*
 23 *odic review by the Secretary”.*

1 (C) Section 7(a)(3) (16 U.S.C. 1536(a)(3))
2 is amended by striking “his” and inserting “the
3 applicant’s”.

4 (D) Section 8(c)(1) (16 U.S.C. 1537(c)(1))
5 is amended by striking “his” and inserting “the
6 Secretary’s”.

7 (E) Section 9 (16 U.S.C. 1538) is amended
8 in subsection (d)(2)(B) and subsection (f) by
9 striking “his” each place it appears and insert-
10 ing “such person’s”.

11 (F) Section 10(b)(3) (16 U.S.C. 1539(b)(3))
12 is amended by striking “his” and inserting “the
13 Secretary’s”.

14 (G) Section 10(d) (16 U.S.C. 1539(d)) is
15 amended by striking “his” and inserting “the”.

16 (H) Section 11 (16 U.S.C. 1540) is amend-
17 ed—

18 (i) in subsection (a)(1) by striking
19 “his” and inserting “the Secretary’s”;

20 (ii) in subsections (a)(3) and (b)(3) by
21 striking “his or her” each place it appears
22 and inserting “the defendant’s”;

23 (iii) in subsection (d) by striking “his”
24 and inserting “the officer’s or employee’s”;

1 (iv) in subsection (e)(3) in the second
 2 sentence by striking “his” and inserting
 3 “the person’s”; and
 4 (v) in subsection (g)(1) by striking
 5 “his” and inserting “the person’s”.

6 **SEC. 19. CLERICAL AMENDMENT TO TABLE OF CONTENTS.**

7 *The table of contents in the first section is amended—*
 8 *(1) by striking the item relating to section 5 and*
 9 *inserting the following:*

“Sec. 5. Recovery plans and land acquisition.”

10 *(2) by striking the items relating to sections 13*
 11 *through 17 and inserting the following:*

“Sec. 13. Private property conservation.

“Sec. 14. Public accessibility and accountability.

“Sec. 15. Marine Mammal Protection Act of 1972.

“Sec. 16. Annual cost analysis by United States Fish and Wildlife Service.

“Sec. 17. Reimbursement for depredation of livestock by reintroduced species.

“Sec. 18. Authorization of appropriations.”.

12 **SEC. 20. CERTAIN ACTIONS DEEMED IN COMPLIANCE.**

13 (a) *ACTIONS DEEMED IN COMPLIANCE.—During the*
 14 *period beginning on the date of the enactment of this Act*
 15 *and ending on the date described in subsection (b), any ac-*
 16 *tion that is taken by a Federal agency, State agency, or*
 17 *other person and that complies with the Federal Insecticide,*
 18 *Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) is*
 19 *deemed to comply with sections 7(a)(2) and 9(a)(1)(B) of*
 20 *the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2),*

1 1538(a)(1)(B)) (as amended by this Act) and regulations
2 issued under section 4(d) of such Act (16 U.S.C. 1533(d)).

3 (b) *TERMINATION DATE.*—The date referred to in sub-
4 section (a) is the earlier of—

5 (1) the date that is 5 years after the date of the
6 enactment of this Act; and

7 (2) the date of the completion of any procedure
8 required under subpart D of part 402 of title 50, Code
9 of Federal Regulations, with respect to the action re-
10 ferred to in subsection (a).

11 (c) *LIMITATION ON APPLICATION.*—This section shall
12 not affect any procedure pursuant to part 402 of title 50,
13 Code of Federal Regulations, that is required by any court
14 order issued before the date of the enactment of this Act.

Union Calendar No. 131

109TH CONGRESS
1ST Session

H. R. 3824

[Report No. 109-237]

A BILL

To amend and reauthorize the Endangered Species Act of 1973 to provide greater results conserving and recovering listed species, and for other purposes.

SEPTEMBER 27, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed